

AMENDED IN ASSEMBLY AUGUST 9, 2004

AMENDED IN ASSEMBLY JULY 23, 2004

AMENDED IN ASSEMBLY JUNE 29, 2004

AMENDED IN SENATE MAY 20, 2004

SENATE BILL

No. 1782

Introduced by Senator Aanestad

February 20, 2004

An act to add Section 11161.5 to the Penal Code, relating to medical crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1782, as amended, Aanestad. Medical crimes: investigation and prosecution.

Existing law provides that a physician and surgeon may prescribe or administer controlled substances to a person in the course of his or her treatment of that person for a diagnosed condition causing intractable pain. Existing law requires the Division of Medical Quality to develop standards for review of cases concerning management of a patient's pain using current authoritative clinical practice guidelines. Existing law provides special procedures to protect the privacy of patient information and other privileged materials in the context of a search of a physician's records, when the physician is not reasonably suspected of involvement in criminal activity relating to those records.

This bill would make findings and declarations, ~~and regarding review of cases involving the prescription of pain medication. This bill would state the intent of the Legislature regarding its provisions. The bill would require that the Attorney General~~ *California District Attorneys*

Association, on or before January 1, 2006, to collaborate with interested parties to develop protocols for the development and implementation of interagency investigations in connection with a physician's prescription of medication to patients. In addition, this bill would specify that the investigation protocol shall be designed to facilitate the timely return of medical records to a physician, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~—no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that, for
2 the past 20 years, medical journals have reported that when
3 physicians fail to manage their patients' pain appropriately it is
4 partially out of fear of criminal prosecution. It is the intent of the
5 Legislature to alleviate this fear by providing for proper review of
6 cases involving the prescription of pain medication before
7 criminal charges are filed.

8 (b) It is the intent of the Legislature to encourage physicians to
9 provide adequate pain management to patients in California
10 consistent with Section 2241.5 of the Business and Professions
11 Code, the Intractable Pain Treatment Act.

12 (c) It is the intent of the Legislature that, where patient records
13 are seized in connection with criminal investigations, physicians
14 should not be prematurely disabled from practicing medicine by
15 not having access to their patient treatment records during those
16 investigations. It is the further intent of the Legislature that, where
17 medical records have been seized in a criminal investigation or
18 prosecution, patients should have access to their medical records
19 through their physicians to continue treatment.

20 SEC. 2. Section 11161.5 is added to the Penal Code, to read:

21 11161.5. ~~(a) On~~ (a) *It is the intent of the Legislature that on*
22 *or before January 1, 2006, the ~~Attorney General~~ California*
23 *District Attorneys Association*, in conjunction with interested
24 parties, including, but not limited to, the ~~California District~~
25 ~~Attorneys Association~~ *Department of Justice*, the California
26 Narcotic Officers' Association, the California Police Chiefs'
27 Association, the California State Sheriffs' Association, the
28 California Medical Association, the American Pain Society, the
29 American Academy of Pain Medicine, the California Society of

1 Anesthesiologists, the California Chapter of the American College
2 of Emergency Physicians, *the California Medical Board, the*
3 *California Orthopedic Association*, and other medical and patient
4 advocacy entities specializing in pain control therapies, shall
5 develop protocols for the development and implementation of
6 interagency investigations in connection with a physician's
7 prescription of medication to patients. The protocols are intended
8 to assure the competent review of, and that relevant investigation
9 procedures are followed for, the suspected undertreatment,
10 undermedication, overtreatment, and overmedication of pain
11 cases. Consideration shall be made for the special circumstances
12 of urban and rural communities. The investigation protocol shall
13 be designed to facilitate communication between the medical and
14 law enforcement communities and the timely return of medical
15 records pertaining to the identity, diagnosis, prognosis, or
16 treatment of any patient that ~~is~~ *are* seized by law enforcement from
17 a physician who is suspected of engaging in or having engaged in
18 criminal activity related to the documents.

19 (b) The ~~administrative~~ costs incurred by the ~~office of the~~
20 ~~Attorney General~~ *California District Attorneys Association* in
21 ~~administering~~ *implementing* this section shall be solicited and
22 funded from nongovernmental entities.

